IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 811 of 1982
With
FIRST APPEAL No. 810 of 1982
With
FIRST APPEAL No. 812 of 1982
With
FIRST APPEAL No. 815 of 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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MINOR SOMAJI HATHAJI DAMOR. - Appellant(s)
Versus
DAMORDARBHAI HIRJIBHAI PATEL. & 8 - Defendant(s)

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Appearance :
MR MK PATEL for Appellant(s) : 1,
None for Defendant(s) : 1 - 6.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 21/08/2006

ORAL JUDGMENT

1. By way of these appeals, the appellants have challenged the judgement and awards dated 30.03.81 passed by the Motor Accident Claims Tribunal, Sabarkantha at Himmatnagar in MACP Nos. 72, 71, 73 and 76 of 1980 whereby the Tribunal dismissed the said claim petitions.

2. The original applicants-present appellants being

the legal representatives of the deceased had filed claim petitions claiming compensation in respect of the accident which occurred on 04.02.80 between Malpur and Dhansura while the deceased was travelling in a tractor bearing no. GRA 9616 with a trolley bearing no. GTF 6763 driven by the respondent no.1 and owned by respondent no.2. The said vehicle was engaged in transporting stones and the deceased was sitting on the stones laden in the trolley. During the course of journey, the deceased was thrown out of the vehicle on the road and he succumbed to the injuries. The claim petitions came to be filed by the widow and minor issues of the deceased under the said circumstance. The Tribunal after hearing the parties passed the aforesaid awards.

3. Learned counsel for the appellants has contended that the Tribunal has erred in not following the documentary as well as oral evidence led by the claimants in the claim petitions. He has further contended that the driver of a vehicle must always take care of such emergent situations before hand so as to be able to control the vehicle in time to avert

the accident and therefore the Tribunal ought to have awarded some amount by way of compensation in view of the rash and negligent driving of the driver.

4. Heard learned counsel for the parties and gone through the materials available on record including the awards of the Tribunal. The Tribunal has gone through the evidence in detail as recorded in paras 9 & 10, and has come to the conclusion that the deceased himself was negligent while travelling in the vehicle and that there was no negligence on the part of the driver. I am in complete agreement with the reasonings adopted and findings arrived at by the Tribunal.

4.1 Even otherwise, as a result of perusal of records, it is also borne out that one of the witnesses had specifically stated that the deceased was smoking at the time of the accident and that while doing so if at all he had been sitting with proper grip on the wooden plate he would not have been thrown out of the vehicle. This very admission of the witness can be quite unambiguously interpreted

that the deceased was busy smoking without taking due care while sitting in the vehicle.

4.2 Moreover, from the panchnama it is clear that the spot where the dead body of the deceased was lying was only at a distance of 3 feet and 11 inches from the right hand side rear wheel of the trolley and that there were brake marks extending over this very small distance. This indicates that the driver after knowing that the deceased had fallen down applied brakes and stopped the vehicle as immediately as possible. Looking to the distance of 3 feet and 11”, it is clear that the vehicle must have been going very slowly. In that view of the matter, the contention that the driver was rash and negligent cannot be accepted.

5. For the foregoing reasons, I do not see any merits in the appeals and therefore the same are required to be dismissed. In the result, the appeals are dismissed. No order as to costs.

(K.S. JHAVERI, J.)

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